

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

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**FILE:** B-213683.2

**DATE:** July 31, 1984

**MATTER OF:** McGraw-Edison Company--Request  
for Reconsideration

**DIGEST:**

1. Where protester by letter within 10 working days of its receipt of notice that its bid had been rejected adequately conveys its dissatisfaction with procuring agency's decision to reject its bid and award to another firm and asks for corrective action (reconsideration by procuring agency), protest submitted to GAO within 10 working days of procuring agency's affirmation of its decision rejecting protester's bid is timely.
2. Procuring activity's rejection of protester's bid was proper where bid failed to include information material to evaluation of bid prices.
3. A bid that is properly declared nonresponsive due to bidder's failure to include in its bid information material to bid evaluation cannot be corrected through mistake in bid correction procedures.

McGraw-Edison Company (McGraw-Edison) requests reconsideration of our decision, McGraw-Edison Company, B-213683, Feb. 14, 1984, 84-1 C.P.D. ¶ 198, in which we dismissed that firm's protest as untimely.

The invitation for bids (IFB) issued by the Army Corps of Engineers (Army) solicited bids for a power transformer with accessories. By letter of September 21, 1983, the Army advised McGraw-Edison that the firm's bid had been rejected as nonresponsive and that award had been made to Siemens-Allis, Inc. (Siemens-Allis). McGraw-Edison objected to that decision in a letter to the Army dated October 5. The Army responded by letter of October 27 that it found no basis to alter its decision and that it did not consider McGraw-Edison's October 5 letter a "protest."

38964

-In our prior decision, we explained that even if we considered McGraw-Edison's October 5 letter a "protest," its subsequent protest filed here on November 23 was untimely because it was not filed within 10 working days of the firm's notice of initial adverse agency action upon receipt of the Army's October 27 letter to continue with the award to Siemens-Allis. In this regard, our Bid Protest Procedures, 4 C.F.R. § 21.2(a) (1983), provide that matters protested initially to the procuring agency must be protested to our Office within 10 working days of the protester's receipt of actual notice of initial adverse agency action on the protest. However, on reconsideration, the protester has shown that it filed a November 10 protest with this Office which would be timely if the firm's initial October 5 letter is considered a timely "protest" to the Army.

We consider McGraw-Edison's October 5 letter to the Army, which was filed as required by our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(2) (1983), within 10 working days of the firm's receipt of the Army's September 21 rejection letter a timely protest to that agency. While McGraw-Edison did not use the word "protest," its letter to the Army following the rejection of its bid clearly contained an expression of dissatisfaction (the firm states that it objects to the award to Siemens-Allis and argues that the rejection of McGraw-Edison's bid is improper) and a request for corrective action (request that the Army reconsider its decision). These are the elements of a timely protest. Radiation Systems, Inc., B-211732, Oct. 11, 1983, 83-2 C.P.D. ¶ 434. Accordingly, since there was an initial timely protest to the contracting agency, McGraw-Edison's subsequent timely protest to this Office will be considered on the merits. For the reasons stated below, the protest is denied.

The Army states that McGraw-Edison's bid was rejected for failure to include the horsepower (hp) required by transformer cooling fan motors. The IFB required that bidders submit a transformer guaranteed efficiency rating and the hp required by the transformer cooling fan motors. Bidders were assessed penalties, that is, additional amounts were added to the bid price submitted for evaluation purposes where the product offered exceeded the agency efficiency standards contained in the IFB. The Army explains that under the terms of the IFB, bidders were penalized \$270 for bid price evaluation purposes for each hp that the total hp for all the cooling fan motors exceeds 10

hp. The Army concludes that because McGraw-Edison's bid failed to include the hp rating, the firm's evaluated bid price could not be determined and that the rejection of the firm's bid on this basis was proper.

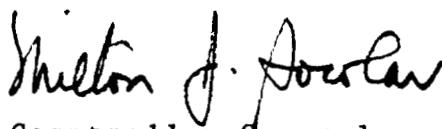
McGraw-Edison states that its failure to include the hp rating in its bid was a clerical omission and that the bid preparation worksheets which the firm submitted subsequent to bid opening show that the intended total hp rating for its cooling fan motors does not exceed 10 hp. McGraw-Edison thus concludes that its bid price for evaluation purposes is not affected by the hp rating and, therefore, the Army should not have rejected the firm's bid.

In reviewing cases of this nature, we generally look to the materiality of the omission as the dispositive factor in determining whether or not a bid should be rejected.

Tektronix, Inc., B-207475.3, Nov. 17, 1982, 82-2 C.P.D.

¶ 452. The hp required for the cooling fan motors materially affected the evaluated bid prices which represented the ultimate contract cost to the government and the determination of the low bidder. Here, without the hp rating, the protester's bid is only about \$300 below that of the awardee and the protester does not argue that its bid contains the hp rating. Given the closeness of the competition, we find that McGraw-Edison's failure to include the hp rating cannot be waived as a minor informality and that the Army properly rejected the firm's bid as nonresponsive.

Furthermore, McGraw-Edison's bid preparation worksheets, submitted after bid opening, cannot be used in determining the responsiveness of the firm's bid. The responsiveness of McGraw-Edison's bid must be determined from the bid itself and it is not proper to consider the reasons for the nonresponsiveness whether due to mistake or otherwise. Cardox, Division of Chemetron Corporation, B-199419, July 21, 1980, 80-2 C.P.D. ¶ 54; B.K. Instruments, Inc., B-212162, Nov. 30, 1983, 83-2 C.P.D. ¶ 627. A nonresponsive bid may not be made responsive by reference to extraneous aids submitted after bid opening. B.K. Instruments, Inc., B-212162, supra. Also, the mistake in bid correction procedures may not be used to correct a nonresponsive bid.

for   
Comptroller General  
of the United States